

Office for Foreign Affairs, 7th October, 1785

OFFICE FOR FOREIGN AFFAIRS, 7th OCTOBER, 1785.

The SECRETARY of the UNITED STATES for the Department of **FOREIGN AFFAIRS**, to whom was referred the Representation of certain French Merchants, against the Acts of New-Hampshire and Massachusetts for regulating Navigation and Commerce, &c. **REPORTS,**

THAT as the objections stated in the memorial against those acts, are equally applied to both of them, he presumes there is no material difference between them. He has the one of Massachusetts, but not that of New Hampshire. This circumstance induces him to take the liberty of suggesting whether it would not be expedient to collect, at the public expence, copies of the acts of the different states, and place them in the secretary's office for the use of Congress and their officers.

The complaints made of these acts may be comprized under the following heads. 1. That they exclude French vessels from all except *certain ports*, whereas all the ports of France are open to American vessels,—and in some of them *no duties* are demanded, viz. in the four free ports. 2. That the duty of tonnage imposed by these acts, is not consistent with the 5th article of the treaty. 3. That they were made to take place so soon after they were enacted, as not to afford reasonable time for European merchants to be informed of them.

In considering these objections, two objects of enquiry present themselves (1) whether these acts observe the letter of the treaty, and (2) whether they quadrate with those principles of reciprocity on which the treaty is professedly founded.

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As to the *first* objection, viz. the exclusion of French vessels from all except certain ports—your secretary observes, that there is no express stipulation in the treaty, which prevents such exclusion, while extended to the *most favored nation*.

He nevertheless thinks that, however lawful and consistent with the letter of the treaty such exclusion may be, and however the states may have good right to refuse establishing any free ports; yet that the French merchants have reason to say, that they enjoy fewer privileges in that respect, in New-Hampshire and Massachusetts, than the merchants of those states do in France, from none of whose ports they are excluded, and in some of which they are allowed particular immunities.

The *second* objection appears to have much weight; the 5th article of the treaty exempts American vessels from the impost of 100 sous per ton, established in France on foreign ships, *unless* when the ships of the United States shall load with the merchandize of France, for another port of the *same dominion* in, *which case* they shall pay the duty abovementioned so long as other nations the most favored shall be obliged to pay it. But it is understood that the United States, or any of them are at liberty, when they shall judge it proper, to establish a duty equivalent *in the same case* —that is in the opinion of your secretary, in the case of a French vessel loading in one port to carry her lading to another port of the United States.

If this be the true construction and meaning of the treaty, then it seems to follow as of necessary consequence, than none of the United States can rightfully impose a duty of tonnage on a French vessel *in any other case*. For if it was intended that they should be at liberty to impose *it in all cases*, why was it expressly stipulated that they might impose it in the *same* or in *such a case*? It would neither be a fair construction of the treaty, nor a construction consistent with the most obvious dictates of reciprocity, to say, that the French are to give up their tonnage of 100 sous in *all cases* but *one*, but that the United

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States are to be at liberty to impose a tonnage equal to 100 sous per ton on French vessels in every case without exception.

The law of Massachusetts makes no distinction of cases, but subjects French vessels to tonnage in every case where they enter their ports after the 1st of August. In this respect therefore your secretary considers that act as deviating both from the letter and spirit of the treaty.

The *third* objection though not very important merits some attention.

The act of Massachusetts passed the 23d June, and took place the 1st August last—This notice might have been sufficient to prevent a ship from *sailing*, but it was not sufficient to prevent a ship's being *sitted out and laden* for their ports. It doubtless is wholly in the discretion of the legislature to make their acts take place when they please: But it nevertheless seems reasonable, that they who are to be affected by laws, should have *seasonable* notice of them.

Your secretary takes the liberty of observing, that the French have extended liberty of commerce to the United States, beyond what they were bound to do by the treaty, and it certainly would not be kind to repay their friendly relaxations, by restrictions more rigid than a due regard to our commercial interests may demand and justify. It is in their power to retaliate, but it would not be good policy in us to dispose them to it.

Your secretary is clearly of opinion, that the commerce of the United States must suffer from partial and discordant regulations; and that until it is under one direction, it will never be conducted in that stable, uniform and consistent manner, which is necessary to produce the benefits and respectability that might be expected from it.

As to the acts in question, he thinks it would be proper to transmit these papers to the legislatures of New-Hampshire and Massachusetts, and to recommend to them a revision of these acts. The confidence that may be placed in their wisdom and in their attachment

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to the honor and good faith of the union, leaves no room to doubt of their readiness to correct any errors which may have inadvertently glided into any of their laws. **ALL** which is submitted to the wisdom of Congress. **JOHN JAY.**